and, *when both are* committed, must constitute *but one legal offense*, they should be included in one charge." The familiar example given is of assault and battery; these are separate acts, and yet when both are committed they may be prosecuted in the same court, since both taken together constitute but *one legal offense*. The point of the case under discussion is: All murder by beating and murder by shooting, taken together, constitute but one legal offense. It would seem that they are separate offenses and should be charged in different counts, since each by itself constitutes a legal offense.

DEFECTIVE HIGHWAYS—PROXIMATE CAUSE—ABSENCE OF GUARD RAIL.—BOONE v. EAST NORWEGIAN TOWNSHIP, 43 Atl. Rep. 1025 (Penn.). Husband of plaintiff was driving over an unprotected declivity at side of highway, and the horse becoming frightened and kicking his leg over the wagon shaft, the team went over the unguarded declivity, and husband of plaintiff was killed. *Held*, that absence of guard rail was proximate cause of death, although horse had kicked his leg over wagon shaft.

There exist no finer distinctions than those made in the determination of proximate causes. This case is important as emphasizing certain characteristic cases concerning the doctrines of which there can now be no ambiguity. The leading case states that when several concurring acts or conditions of things, one of them a wrongful act of defendant, produce the injury which would not have been produced but for the wrongful act or omission, such act or omission is the proximate cause of the injury. *Campbell* v. *Stillwater*, 32 Minn. 388.

ELECTRIC WIRES—NEGLIGENCE—CONTRIBUTORY NEGLIGENCE.—DEVLIN ET AL. v. BEACON LIGHT CO., 43 Atl. Rep. 962 (Penn.). Plaintiff passing along street, stepped upon wire lying along sidewalk, which by this act of plaintiff came into contact with heavily charged wires and thus gave shock to plaintiff which caused severe injuries. *Held*, that it is negligence for Electric Light Company to leave unguarded wire lying upon street in such position that it may come into contact with heavily charged wire; also, contributory negligence must be proved and not presumed from acts of person stepping on wire.

This is one of the cases in which electrical companies are held to most rigid liability. Such a company is now held responsible for defects in insulation, non-insulation, careless constructive work, falling of poles, wires, etc. Ordinarily the rule as to negligence has embraced those cases in which a party has shown want of ordinary or reasonable care in respect to what it was the duty of the party to do or to leave undone. The prudence of the reasonable man about his own affairs was all that was required, and in the case of railroads and electric companies this degree of care would apply to the ordinary and customary apparatus of their businesses. But now the rule is extended, and electrical companies in particular must prevent the slightest possibility of injury, even though only *indirectly* caused by their apparatus, which is now considered the proximate cause. American courts are in accord on this point. The doctrine of res ipsa loquitur is given much weight.

EVIDENCE—BILL OF EXCEPTIONS NOT NECESSARY TO BRING IT BEFORE THE SUPREME COURT.—PEOPLE v. VERENSENECKOCKOCKHOFF, 58 Pac. Rep. 156.—An appeal for error in instructions to the jury as to value and effect of the evidence. *Held*, that a bill of exceptions to bring up the evidence is unnecessary.

This is an interesting decision, coming from the Supreme Court of California whose opinions are generally held to be good law, because it would appear

that the weight of judicial decision had almost established the law the other way. It was objected in this case that the instructions to the jury could not be reviewed without the evidence, because it would not otherwise appear that they were improper and injurious. But the court said it would be presumed that there was evidence of some character to which the instructions would apply, and where such instructions would be erroneous "as applied to all possible evidence to which it would be applicable," then error existed. If this decision is followed the law on this point will be directly changed. In *Kelly* v. *Doyle*, 54 P. 394, the court said: "Alleged errors in giving instructions will not be reviewed where the abstract does not fully set forth the instructions, *and the evidence on which they were based*," and the rule was stated in almost identical terms in *Eickhof* v. *Chicago M. S. St. Ry. Co.*, 77 Ill. App. 196, thus: "The appellate court will not consider the instructions unless *all the evidence upon which they were based is before it.*" For a similar emphatic statement of the rule see *Felmet* v. *Southern Exp. Co.*, 31 S. E. 722, and *Yates* v. *United States*, 90 Fed. 57.

FOREIGN CORPORATIONS—SERVICE OF PROCESS UPON AGENT—WALL V. CHESAPEAKE AND OHIO R. R. Co., 95 Fed. Rep. 398.—A person employed in Chicago to solicit business and give information on behalf of a foreign railroad corporation, having no power to make contracts for the company, is not an agent on whom service of process against the company can legally be made under Illinois statute.

Wood, J., dissents, arguing on the ground that the power to make contracts is not the test of agency. The decision of this case turns primarily upon the interpretation of the State statute governing the service of process. The statute does not designate with any precision who is to be such an agent, that he may be served with process. The court in deciding this case in conformity with its previous ruling in *Fairbank & Co.* v. *Cincinnati*, 9 U. S. Appeal 212, seems to have laid down good law in spite of the excellent reasons expressed in the opinion of the dissenting justice. A careful reading of the case of *Maxwell* v. *Atchison, T. & S. F. Co.*, 34 Fed. Rep. 286, which gives the law on this subject, will show that he misunderstood the facts in the case of *Block* v. *Atchison, T. & S. F. Co*,. 21 Fed. Rep. 529, the only authority he gives in support of his views.

ILLEGAL CONSIDERATION—GAMING.—ST. LOUIS FAIR ASSOCIATION V. CARMODY ET AL., 52, S. W. 365.—Where plaintiff, in addition to conducting lawful races had arranged booths and appliances for gambling on the races, and contracted with defendant whereby he was to furnish refreshments, thus increasing the attraction and promoting the gambling. *Held*, that such contract was illegal and void.

This case discusses "*illegal consideration*," and purports to base its decision on this ground. It also states the contract to be "against public policy," and this would seem to be the true ground for its invalidity. The decision, if resting upon the doctrine of illegality of consideration, would carry that to a great extent. There was nothing illegal in the specific privileges for which the defendant (appellant) contracted, and the invalidity of the contract seems to arise out of its pernicious effects, since it, in its operation, promoted an illegal act, and the presumed intention of the parties must have been that it would do this. This was the ground of the decision in the case of *Pearce* v. *Brooks*, 1 L. R. Exch. 213, cited by the court as referred to in *Michael* v. *Bacon*, 49 Mo. 475, and given weight in the opinion.